



Legislative Research Council

MINUTES

Domestic Abuse Study

Senator Deb Soholt, Chair
Representative Mike Stevens, Vice Chair

Fourth Meeting
2013 Interim
October 21, 2013

Room 413
State Capitol
Pierre, South Dakota

Monday, October 21, 2013

The fourth meeting of the Domestic Abuse Study Committee was called to order by the Chair, Senator Deb Soholt, at 11:15 a.m. in Room 413 of the State Capitol in Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senator Deb Soholt, Chair; Representative Mike Stevens, Vice Chair; Senator Craig Tieszen; Representatives Jim Bolin, Kristin Conzet (via telephone), Peggy Gibson, Karen Soli, and Tona Rozum. Excused: Senator Deb Peters.

Staff members present included Amanda Reiss, Legislative Attorney; Reuben Bezpaletz, Chief Analyst for Research and Legal Services; and Cindy Tryon, Legislative Secretary.

(Note: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all reference documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://legis.state.sd.us> under "Interim Information – Current Interim – Minutes and Agendas.")

Approval of Minutes

REPRESENTATIVE GIBSON MOVED, SECONDED BY REPRESENTATIVE BOLIN, TO APPROVE THE MINUTES OF THE SEPTEMBER 4, 2013, MEETING. The motion prevailed unanimously on a voice vote.

Summary and Review of Previous Meetings and Discussion of Draft Legislation

Senator Deb Soholt, Committee Chair, explained that the committee had been divided into two subgroups. One subgroup was tasked with drafting legislation to better define the terms used in domestic abuse statutes. That subgroup was chaired by Senator Craig Tieszen and the other members were Representative Jim Bolin, Representative Peggy Gibson, and Representative Karen Soli.

The second subgroup was tasked with drafting legislation to address issues presented at prior committee meetings and at the public hearings. That subgroup was chaired by Senator Deb Soholt and the other members were Representative Mike Stevens, Representative Kristin Conzet, and Representative Tona Rozum.

Senator Craig Tieszen presented draft #105, the draft legislation prepared by the first subgroup.

Senator Tieszen explained that three main issues with the current domestic abuse laws came to light during the public testimony heard by the committee. First, the committee heard testimony that platonic

roommates are being arrested and charged with domestic abuse under the current law. Second, the committee heard testimony about the need for persons involved in a significant romantic relationship to have access to the protections of the domestic abuse statutes. And third, the committee heard testimony regarding a loophole within the current definition that the domestic abuse statutes apply to a couple who have a child, but not to a couple expecting a child together who are not living together.

As a result of hearing those issues, the subgroup drafted #105 in order to address each of these issues and clearly define the relationship to which the domestic abuse and stalking statutes should apply.

After much discussion, the full committee agreed on the subgroup's recommendations, and decided that the term "family or household members" should be changed to "protected persons."

Ms. Amanda Reiss, Legislative Research Council, was asked to rewrite the draft to incorporate the intent of draft #105, but to change the phrase "family or household members" to "protected person." The committee also requested that Ms. Reiss update the related language throughout Chapter 25-10 to reflect the new phrase.

SENATOR TIESZEN MOVED, SECONDED BY REPRESENTATIVE BOLIN, TO MOVE FORWARD WITH DRAFT BILL #105 WITH THE COMMITTEE CHANGES. The motion prevailed on a roll call vote with 8 voting AYE, 1 EXCUSED. Those voting AYE: Tieszen, Bolin, Conzet, Gibson, Rozum, Soli, Stevens, Soholt. Those EXCUSED: Peters.

Mr. Reuben Bezpaletz, Legislative Research Council, said that making these changes is not as mechanical as just replacing each phrase and that the staff would have to look at each section and make sure the language used best serves the intended purpose. Mr. Bezpaletz said that the changes would be made and the new draft would be sent to all committee members for their comments before finalizing for the Executive Board report.

Senator Soholt then shared with the committee that the Department of Social Services has agreed to conduct a statewide assessment of the current agencies and resources working with domestic abuse victims. Senator Soholt explained that Social Services does have funding available to conduct an assessment that would provide a better understanding of which areas of the state have efficient and effective domestic abuse and victim's assistance services and where those services are lacking.

Senator Soholt explained that the STOP Grant from the federal government will be up for reprioritization in 2014 and having the information from this assessment will help determine what the best use of those federal dollars would be. Senator Soholt said that it is important to make sure the community response throughout our state is as consistent and coordinated as possible. Senator Soholt added that the details of the assessment had not yet been finalized but that it would have multiple lenses in order to address the question of whether or not we are doing enough in our state.

The committee agreed unanimously that this assessment should move forward.

Mr. Greg Sattizahn, State Court Administrator, Unified Judicial System, discussed one of the issues regarding protection orders that was brought to the attention of the committee over the summer. Mr. Sattizahn said that, due to time constraints, the judges do not always have the time to complete the report regarding how they reached their decisions regarding protection orders. Mr. Sattizahn explained that, although this is a time consuming process, the Supreme Court has no way of making an accurate review of an appealed case without that information. Mr. Sattizahn said that he would be happy to work with anyone from this committee to prepare some policy or legislation that would help address that issue.

Senator Soholt proceeded with the report from the second subgroup. The Senator explained that this subgroup was tasked with looking at identified gaps in the domestic abuse statutes.

Senator Soholt then asked Mr. Bezpaletz to present the draft legislation written based on the second subgroup's discussions.

Mr. Bezpaletz presented draft legislation #96 which is intended to protect the children of a victim of domestic abuse. The committee suggested several changes to the draft and directed Mr. Bezpaletz to make those changes prior to presentation to the Executive Board.

REPRESENTATIVE STEVENS MOVED, SECONDED BY REPRESENTATIVE GIBSON, TO MOVE FORWARD WITH DRAFT BILL #96 WITH THE COMMITTEE CHANGES. The motion prevailed on a roll call vote with 7 voting AYE, 2 EXCUSED. Those voting AYE: Tieszen, Bolin, Gibson, Rozum, Soli, Stevens, Soholt. Those EXCUSED: Conzet, Peters.

Mr. Bezpaletz presented draft legislation #97 which provides for continuity in the judicial review of certain lawsuits, complaints, and petitions between parties to a petition for certain protection orders.

REPRESENTATIVE SOLI MOVED, SECONDED BY REPRESENTATIVE GIBSON, TO MOVE FORWARD WITH DRAFT BILL #97 AS WRITTEN. The motion prevailed on a roll call vote with 7 voting AYE, 2 EXCUSED. Those voting AYE: Tieszen, Bolin, Gibson, Rozum, Soli, Stevens, Soholt. Those EXCUSED: Conzet, Peters.

Mr. Bezpaletz presented draft legislation #98. Representative Mike Stevens explained that this piece of legislation would allow a temporary protection order from a tribe or another state to be enforced in South Dakota upon proof that it has been served. Representative Stevens said that this legislation strengthens the protective order statute.

SENATOR TIESZEN MOVED, SECONDED BY REPRESENTATIVE ROZUM, TO MOVE FORWARD WITH DRAFT BILL #98 AS WRITTEN. The motion prevailed on a roll call vote with 7 voting AYE, 2 EXCUSED. Those voting AYE: Tieszen, Bolin, Gibson, Rozum, Soli, Stevens, Soholt. Those EXCUSED: Conzet, Peters.

Mr. Bezpaletz presented draft legislation #99 and #100. Draft #100 makes it crystal clear to the offender what the protection order means and that for no reason is the respondent to contact the petitioner. Draft #99 allows for an affirmative defense if the petitioner invites or initiates contact with the respondent.

REPRESENTATIVE ROZUM MOVED, SECONDED BY REPRESENTATIVE GIBSON, TO MOVE FORWARD WITH DRAFT BILL #100 AS WRITTEN. The motion failed on a roll call vote with 4 voting AYE, 3 voting NAY, 2 EXCUSED. Those voting AYE: Gibson, Rozum, Soli, Soholt. Those voting NAY: Tieszen, Bolin, Stevens. Those EXCUSED: Conzet, Peters.

Committee consensus was to include the issues covered in draft legislation #99 and #100 in the report to the Executive Board for future consideration.

Mr. Bezpaletz presented draft legislation #102. This legislation would allow the judge to use discretion when granting a protection order for either domestic abuse or stalking. Currently, if the petitioner files the incorrect petition, the application is thrown out. This legislation would allow the judge to decide which type of protection order should be granted.

REPRESENTATIVE STEVENS MOVED, SECONDED BY REPRESENTATIVE SOLI, TO MOVE FORWARD WITH DRAFT BILL #102 AS WRITTEN. The motion prevailed on a roll call vote with 7 voting AYE, 2 EXCUSED. Those voting AYE: Tieszen, Bolin, Gibson, Rozum, Soli, Stevens, Soholt. Those EXCUSED: Conzet, Peters.

Mr. Bezpaletz presented draft legislation #107. This legislation would establish the crime of committing certain acts of domestic abuse in the presence of a child.

After much discussion, Senator Soholt asked the committee what their preferences are regarding this piece of legislation:

- The majority prefer that it apply to all acts of domestic abuse, not just felonies.
- The majority of the committee prefer this be a stand- alone crime, not aggravating.
- The committee unanimously agreed that this should be a consecutive sentence.

Mr. Bezpaletz presented an amended version of draft bill #102. The committee requested a few additional changes.

REPRESENTATIVE STEVENS MOVED, SECONDED BY REPRESENTATIVE GIBSON, TO MOVE FORWARD WITH DRAFT BILL #107 WITH THE COMMITTEE CHANGES. The motion prevailed on a roll call vote with 7 voting AYE, 1 voting NAY, 1 EXCUSED. Those voting AYE: Tieszen, Conzet, Gibson, Rozum, Soli, Stevens, Soholt. Those voting NAY: Bolin. Those EXCUSED: Peters.

Public Testimony

(Public testimony was taken throughout the meeting as different issues were discussed by the committee.)

Mr. Greg Sattizahn, State Court Administrator, Unified Judicial System, said that, regarding protection orders, bill drafts # 99 and 100 may be intellectually inconsistent, but they are meant to combat situations that show reoccurrence. He said that it is important to make sure the offender understands the seriousness of the order and yet they should have some options if they are baited into breaking that order.

Ms. Krista Heeren-Graber, Executive Director, SD Network Against Family Violence and Sexual Assault (The Network), spoke in opposition to draft bill #99 as this could create a he said – she said type of situation.

Ms. Heeren-Graber said that she is very much in favor of leaving the mandatory minimum sentence in draft legislation #107.

Ms. Kimberly Zachrison, Deputy States Attorney for 11 counties, Huron, spoke in opposition to draft bill #99 stating that if the offender has the option to state that the petitioner invited him, the charges may be dropped. The victim is caught up in a cycle and the protection order is meant to protect her, even if the victim makes a poor decision. Ms. Zachrison added that, based on the circumstances and facts of the case, they currently have prosecutorial discretion available to them when deciding whether or not to press charges.

Ms. Zachrison also testified that a mandatory minimum sentence should be a part of the draft legislation #107 because the judges throughout the state are each so different and some may just give time served which removes any teeth from the bill.

Ms. Chris Jongeling, Director, SD Coalition Ending Domestic Violence and Sexual Abuse (SD Coalition), spoke in opposition to draft bill #99 stating that it contradicts the federal violence against women act and adds a burden on to the victim when the burden should be on the offender.

Committee Discussion and Final Action

Senator Soholt explained that a final report will be compiled based on the minutes from each committee meeting and from the public hearings that were held. That report will be sent electronically to the members for additional input and comments. The final report, along with all the draft legislation, will be presented to the Executive Board on November 18.

Once the Executive Board has approved the draft legislation, the final bills will be prepared for introduction to the full Legislature. The committee agreed that Senator Soholt and Representative Stevens should be the prime sponsors of these committee bills, except the bill defining domestic abuse which will have Senator Tieszen as the senate prime sponsor.

Adjourn

REPRESENTATIVE GIBSON MOVED, SECONDED BY SENATOR TIESZEN TO ADJOURN. The motion prevailed unanimously on a voice vote.

The Committee adjourned at 4:00 PM.



All Legislative Research Council committee minutes and agendas are available at the South Dakota Legislature's Homepage: <http://legis.state.sd.us>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.aspx>).